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HUMAN RIGHTS COMMITTEE

Fifty-second session

SUMMARY RECORD OF THE 1385th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 3 November 1994, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.15 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Methods of work of the Committee under article 40 of the Covenant (continued)

1. The CHAIRMAN, referring to the paper on the subject prepared by the Secretariat and in particular to its paragraph 5, which contained two draft decisions on the related subjects of overdue reports and action in the case of emergencies, invited the Committee to continue its consideration of the text of paragraph 5 (a).

2. Mr. FRANCIS endorsed Mrs. Higgins' view that it would be inadvisable to consider a country report in the absence of representatives of the State party concerned. Such a procedure would only further alienate a recalcitrant State party. Nevertheless, it was inadmissible to allow States parties to fall as many as three periodic reports in arrears, as was sometimes the case. Much of the problem could be attributed to the inadequate numbers of staff servicing the Committee, an issue which would need to be addressed at some point.

3. Prevention was better than cure; the longer a State was permitted to lag behind with its reports, the harder it would be for it to comply with reporting requirements. The Special Rapporteur on follow-up should therefore be brought into the procedure at a much earlier stage than at present and greater efforts should be made to create and maintain good public relations with States parties. If the resultant workload on the Special Rapporteur was too great, consideration should be given to the possibility of calling on Committee members for assistance in making informal contacts with States in their own region. National non-governmental organizations might also be asked to assist.

4. He endorsed Mr. El Shafei's proposal that the question of long-overdue reports should be brought to the attention of the meeting of States parties convened to elect members of the Committee. The Centre for Human Rights should be asked to ensure that a relevant item was placed on the agenda of the next such meeting.

5. Mr. POCAR said that, while it was probably best to separate the decisions on overdue reports and action in emergencies, the two issues were necessarily linked. It was thus essential in both situations, whatever the differences of method in tackling them, that dialogue should be maintained with the States parties concerned. One of the Committee's main achievements had been to develop a procedure that fostered dialogue with States parties on the matter of reporting, a dialogue that in most cases operated perfectly satisfactorily. In emergencies, too, the Committee had generally succeeded in instituting a dialogue with the State party concerned.

6. Dialogue was important not just on legal grounds but as a matter of policy. Lack of dialogue was one of the main stumbling blocks to the realization of human rights and international cooperation. The Committee should therefore seek ways and means of entering into discussion with States parties which appeared reluctant to talk to it. He endorsed the idea, set out

in paragraph 5 (b), of sending a mission from the Committee to certain countries, to be decided on a case-by-case basis, with a view to resuming dialogue.

7. Another measure might be to hold a session of the Committee, not at its usual venues of Geneva and New York, but at other locations in other regions. The United Nations had offices in many countries that might be asked to assist in convening such a session, which would help to establish a climate of trust in the region concerned.

8. Notwithstanding the efforts made, the attempt to achieve dialogue might be frustrated. In such cases, the Committee ought to be able forcefully to draw the attention of other bodies to such difficulties. He would therefore be in favour of clearly indicating in the Committee's annual report which States parties were not complying with their treaty obligations so that those other bodies might take action.

9. The meeting of chairpersons had recommended action other than continuing to seek a dialogue, and a number of treaty bodies were already following different practices. Those bodies, however, had tasks different to those of the Committee; he felt that if the Committee were to abandon its commitment to dialogue, it ran the risk of losing all that it had so far achieved.

10. Mrs. CHANET endorsed Mr. Pocar's views and proposals. Consideration of a report in the absence of representatives of the State party would be inappropriate and evidence of failure. Moreover, it would penalize negligent States parties equally, when not all were deliberately absent. Some States parties, including one whose case had been discussed at the current session, had little idea of the meaning of the Covenant or the function of the Committee. Every effort should be made to resume and maintain dialogue, even though such a process might take some time - up to 15 years in one case. The technical assistance and other services of the Centre for Human Rights should also be sought to assist States parties in preparing reports and deciding on the composition of their delegations.

11. Mrs. HIGGINS said that, despite the fact that a previous request to a meeting of States parties to place the matter of overdue reports on its agenda had been declined, she agreed with Mr. Shafei that that was an essential step to take if the Committee was to keep its distance from the political organs of the United Nations and maintain its status as a treaty body. It might also be useful to ask that the Chairman of the Committee should be allowed to address the meeting of States parties; he could then make a carefully worded statement setting out the problems which the Committee would like to see tackled. It was particularly unfortunate, for example, that States parties which had not even submitted an initial report had had candidates elected to membership of the Committee.

12. Mr. MAVROMMATIS said that, although he agreed with Mrs. Higgins to some extent, his experience as a participant at most meetings of States parties suggested that the Chairman's presence at such meetings would be totally ineffective and incompatible with the dignity of his position. The meetings were generally attended by junior mission staff whose principal task was to lobby for their candidates for election. However, it might be possible for

the meeting of States parties to be reconvened on a different day, when it would be in a position to give calm and considered attention to what the Chairman might have to say and the voice of those States parties which took their obligations under the Covenant seriously would prevail.

13. Mr. LALLAH said that he nevertheless still favoured the idea that the Chairman should address the meeting of States parties called to elect members of the Committee. Then, if the Committee later decided to examine reports in the absence of representatives of States parties, it would be seen to have explored every other option. The difficulty of making a valid appeal to the meeting of States parties was that it was completely unstructured; it had no permanent secretariat and its Chairman was elected for the duration of the meeting only.

14. Mr. EL SHAFEI said there appeared to be support for his view that it was the duty of States parties themselves to make sure that the Covenant was implemented in good faith and in a proper manner. As a further step, he proposed that the Chairman of the Third Committee of the General Assembly, when the report of the Human Rights Committee came before it, might be asked to suggest that it should consider a supplementary report setting out the latter's concerns in various areas, including that of overdue reports.

15. The CHAIRMAN said that in such a case it might be possible to combine paragraphs 5 (a) and 5 (b), the subjects of which were in any case linked.

16. Mrs. HIGGINS said that, while recognizing the link between the two issues, she thought it would be wise to deal with them separately because different combinations of action were involved. In the case of paragraph 5 (b), she would be against approaching the High Commissioner for Human Rights or the Security Council or other bodies. The High Commissioner already routinely received all the Committee's documentation, so that additional action was unnecessary. It would be unwise to make any approach to the Security Council, which was currently embarking on an uncertain and politically sensitive path of holding human rights violations in certain cases to be a threat to international peace and security and allowing action to be taken under Chapter VII of the Charter.

17. Mr. LALLAH, referring to the suggestion that the matter of overdue reports should be brought before the Third Committee of the General Assembly, suggested that a draft resolution might be submitted to the Third Committee calling for the convening of a special meeting of States parties to consider the matter of overdue reports, if their regular meeting showed no inclination to do so.

18. Mr. MAVROMMATIS endorsed that proposal.

19. Mr. EL SHAFEI said it might be possible to arrange for the Chairman of the Human Rights Committee to be invited to attend the relevant discussions in the Third Committee.

20. Mr. AGUILAR URBINA endorsed what had been said by Mrs. Higgins, Mr. Lallah, Mr. Mavrommatis and Mr. El Shafei. In addition to the problem of overdue reports, the matter of lack of follow-up given to the Committee's comments and its views on communications could be mentioned at those meetings.

21. The CHAIRMAN proposed that, in the light of the discussion, paragraph 5 (a) should be redrafted as a Committee decision including the following points. The Chairman should write to all States parties to the Covenant explaining the situation regarding the serious problem of overdue reports. He should also address a letter to the meeting of States parties, through a channel to be suggested by the Secretariat, requesting that the Chairman should be invited to attend that meeting in order to explain the situation. A request should also be made to the Third Committee to invite the Chairman of the Human Rights Committee to address the Third Committee on the subject. The question of the financial implications of those actions would need to be dealt with, but perhaps the Centre for Human Rights might be asked to cover the cost of the Chairman's attendance at those meetings.

22. It was so decided.

23. Mrs. CHANET drew attention to the first sentence of paragraph 5 (b) ("Where the consideration of a report or a study reveals a grave human rights situation, the Committee may approach the High Commissioner for Human Rights and request him to draw the attention of the Security Council and any other competent organ of the United Nations to that situation.") She did not believe it was for the Committee to remind the High Commissioner of the findings set out in its reports: he had a responsibility to read those reports and was perfectly capable of discerning from them the existence of a grave human rights situation. As for the Security Council, it had specific functions clearly outlined in the Charter; the Committee had little to gain from contacts with it, and by seeking such contacts, it might even subvert its own function, which was derived from a treaty.

24. Mrs. EVATT agreed that it was not for the Committee to call upon the High Commissioner to take action in a specific case, for he should draw his own conclusions from the Committee's reports. However, in view of the massive amount of documentation submitted to the High Commissioner, it might be advisable to draw particular attention to certain reports, perhaps by transmitting them "as a matter of urgency".

25. Mr. PRADO VALLEJO said that permanent contact should be established between the Committee and the High Commissioner with a view to coordinating efforts to deal with serious human rights violations. A discussion with the High Commissioner at each of the Committee's sessions would provide an appropriate occasion for raising serious human rights problems.

26. With regard to the role of the Security Council, he recalled that the World Conference on Human Rights held at Vienna had discussed the possibility that the Security Council might take action, not only under the Charter, but also in pursuance of the objectives of human rights instruments.

27. Mr. LALLAH said he agreed that the Committee should have minimal recourse to other institutions, including meetings of States parties to the Covenant. The powers of the High Commissioner for Human Rights were derived from those of the United Nations system as a whole. It would be preferable, however, for the Committee's functions under the Covenant not to be diluted by association with that system. The Committee should, of course, exchange information with the High Commissioner and continue the practice of meeting with him once every session: he could be relied upon to draw the necessary conclusions on the basis of those contacts.

28. The CHAIRMAN, speaking as a member of the Committee, recalled that the Committee, as a treaty body, operated outside the United Nations system per se, although the United Nations did provide its funding, through the Centre for Human Rights. The High Commissioner's attendance at a meeting every session provided the Committee with an opportunity to alert him to urgent human rights situations. Several years previously, the Committee had discussed the idea of having recourse to the Security Council, but had later abandoned the notion.

29. Mr. POCAR said that, in the event that the Committee's reports and decisions were not being received by the High Commissioner, that would be an administrative deficiency that should be resolved at the administrative level. It was quite another matter, however, to request action from him, for such a request would entail encroaching upon his powers.

30. Concerning the Committee's relations with the United Nations system, he recalled that the Covenant established a mechanism for such relations through the submission of the Committee's annual reports to the General Assembly. In urgent cases involving human rights, the Committee could annex information to its annual reports; it had already done so on one occasion, in connection with the situation in the former Yugoslavia.

31. Mr. PRADO VALLEJO said there could be no conflict of interests between the Committee's work and that of the High Commissioner, which represented parallel paths to a single goal: the promotion and protection of human rights. When the Covenant had been drafted, the High Commissioner's office had not existed - if it had, explicit provision would surely have been made for cooperation between the two institutions in cases of serious human rights violations. In the case of Rwanda, for example, the High Commissioner had specific responsibilities for monitoring the human rights situation, while the Committee was responsible for considering the Rwandese report on human rights. Consequently, their functions were complementary.

32. Mr. AGUILAR URBINA remarked that the flow of information from the Committee to the High Commissioner was mainly an administrative problem. However, the flow must go both ways: the High Commissioner should actively pursue contact with the Committee and, most importantly, take forceful follow-up action on the information received from it.

33. Mr. DIMITRIJEVIC said the discussion at the meeting of chairpersons of human rights treaty bodies had indicated that other bodies looked to the Committee for guidance on how to handle relations with the United Nations system and the Security Council, and that they were hoping for innovative

approaches. Other human rights bodies also considered it important that the High Commissioner should carry out his mission with zeal and seemed to believe that reminders or appeals to encourage him to do so would not be amiss. He therefore had no difficulty with the wording of paragraph 5 (b): it was necessary to indicate that the High Commissioner was under an obligation to act in cases of serious human rights violations.

34. Mrs. CHANET observed that there was no need to institutionalize the Committee's relations with the High Commissioner, as paragraph 5 (b) aimed to do. His functions were assimilated to those of the Secretary-General and the United Nations system, which the Covenant addressed quite explicitly.

35. Mr. MAVROMMATIS endorsed Mrs. Chanet's remarks and suggested that the phrase "the Committee may approach the High Commissioner for Human Rights and request him to draw the attention of the Security Council and any other competent organ of the United Nations to that situation" should be replaced by "the Committee would inform, on an urgent basis, the principal organs of the United Nations, as well as the High Commissioner for Human Rights".

36. The CHAIRMAN, referring to Mr. Mavrommatis' proposal, suggested that the words "the States parties" should be inserted before "the principal organs".

37. Mrs. HIGGINS said she could not go along with any reference to the principal organs of the United Nations because she firmly believed the Committee's most prized possession was its independence from such organs.

38. Mr. POCAR endorsed Mrs. Higgins' view. The new proposal did not accurately reflect the opinions of the members, for the "principal organs of the United Nations" included the Security Council, and no one seemed to be in favour of the Committee's approaching that body. He would suggest that the entire sentence should be deleted; were it to be retained, it would at any rate be necessary to delete the words "or a study".

39. Mr. MAVROMMATIS, supported by Mrs. EVATT, said the phrase referred only to the Committee's informing United Nations bodies about grave human rights situations. There was surely no problem with the mere transmission of information. He would not press his amendment if it was not generally supported, however.

40. Mrs. KLEIN (Centre for Human Rights) said that, at the conclusion of each session of a treaty body, the Secretariat regularly informed the Secretary-General and the High Commissioner in writing of the main issues dealt with and of any concluding observations adopted. She also drew attention to paragraph 29 of the report of the fifth meeting of persons chairing the human rights treaty bodies, dated 10 October 1994, referring to the chairpersons' suggestion for a meeting in 1995 with the Secretary-General to discuss the role of the treaty bodies in bringing urgent matters relating to human rights violations to his attention and, through him, to the Security Council.

41. Mrs. HIGGINS said that a regular flow of information about the Committee's work was to be welcomed, but for the Committee to address the Security Council or another principal organ of the United Nations with a

request to do something about a specific situation was quite another matter. That additional step had been suggested by the meeting of chairpersons without, as far as she was aware, the Committee having given any authority in that respect to its representative at the meeting.

42. Mr. DIMITRIJEVIC said that, when representing the Committee at the fifth meeting of chairpersons of human rights treaty bodies, he had gone along with the suggestion, which was an old one that had never previously met with any objection. As Mr. Pocar had pointed out, an approach would be made only in special situations. He shared the views expressed by Mr. Mavrommatis, adding that a qualifying clause such as "on an urgent basis" or "as necessary" might be added to the text.

43. Mrs. HIGGINS said that, to her great regret, she was unable to join a consensus on the first sentence of paragraph 5 (b) for the reasons already given.

44. The CHAIRMAN suggested that, in the light of Mr. Pocar's remarks and the information given by Mrs. Klein, the first sentence of paragraph 5 (b) should be deleted.

45. It was so decided.

46. Mr. POCAR, referring to the question of the format of the Committee's annual report under article 45 of the Covenant (paras. 6-10 of the draft), suggested that only the first sentence of paragraph 10 should be retained. To adopt the proposals in paragraphs 7, 8 and 9 and the second sentence of paragraph 10, which related to those proposals, would be tantamount to agreeing to the non-publication of certain decisions under some circumstances. He was unable to subscribe to such a course because the annual report was the only place where the Committee's decisions were reproduced.

47. Mrs. HIGGINS fully endorsed that proposal, adding that the reference to the need for means and staff in the second sentence of paragraph 10 ought to be taken up elsewhere in the Committee's recommendations.

48. Mr. AGUILAR URBINA strongly supported the latter suggestion. Lack of staff was making it very difficult for the Committee to perform its task.

49. Mr. FRANCIS suggested that the Director of the Centre for Human Rights should be invited to attend a meeting of the Committee in order to discuss the staffing problem.

50. The CHAIRMAN said he had intended to suggest that the Committee should authorize him to write a letter to the Secretary-General asking whether the Committee might invite the High Commissioner for Human Rights and the Director of the Centre for Human Rights to attend its fifty-third session in New York.

51. Mrs. CHANET supported the proposal for the deletion of paragraphs 7-9. With regard to the staffing problem, she agreed that the matter was becoming urgent and wondered what further action could be taken in addition to that just mentioned by the Chairman.

52. The CHAIRMAN said that a possible course might be for members of the Committee to ask their Governments to earmark part of their assistance specifically for use by the Committee.

53. Mrs. PRADO VALLEJO, noting that the Committee's previous requests for additional staff had fallen on deaf ears, suggested that a direct personal approach should be made to the Secretary-General at the next session, to be held in New York.

54. Mrs. EVATT said that she supported all the comments made by previous speakers on the subject of staff and resources and appreciated the efforts being made in that connection.

55. The CHAIRMAN said he took it that there was a consensus on the proposal to delete paragraphs 7-9 and the second sentence of paragraph 10.

56. It was so decided.

57. The CHAIRMAN said that the Committee had completed its consideration of the paper on methods of work under article 40 of the Covenant.

Draft general comment on article 25 of the International Covenant on Civil and Political Rights (CCPR/C/51/CRP.3) (continued)

58. The CHAIRMAN recalled that the draft general comment on article 25 had been introduced by the Chairman/Rapporteur of the Working Group on Article 40 at an earlier meeting.

59. Mr. WENNERGREN said that, as a participant in the preparation of the draft general comment, he was greatly impressed by the excellent draft submitted by Mrs. Evatt to the consideration of the plenary Committee. In his view, special importance should be attached to subparagraph (a) of article 25, and the precise meaning of the subparagraph should therefore be spelt out with the utmost clarity and illustrated by concrete examples. In that connection, he referred to participation by laymen in judicial proceedings, not necessarily only as members of juries, and to specific instances in which citizens could influence the conduct of public affairs by methods other than voting. The provision in subparagraph (a) of the article should generally be given greater prominence and those paragraphs of the draft which had a special bearing upon it, such as paragraphs 9 and 16, should be grouped together.

60. Mr. MAVROMMATIS said that the draft could perhaps place greater emphasis on the question of securing the independence and permanence of the public service and its freedom from political interference. The first sentence of paragraph 15 of the draft was, in his view, somewhat dangerous in that it grouped the judicial service together with the military and the police. In their reports, States should be required to specify precisely how the independence of the judiciary was assured. In his view, the matter deserved a separate paragraph of its own. With regard to electoral systems, referred to in paragraph 13 of the draft, he said that the question of the protection of minorities in connection with article 25 required careful consideration, since the operation of certain electoral systems could result in minority rule.

61. Mr. LALLAH said he welcomed the fact that much thought had been given during the preparation of the draft to the practicalities of ensuring the independence of the public service from political control but had been mildly disappointed that no reference had been made to the need for popular approval of hereditary monarchies.

62. He agreed with Mr. Mavrommatis that the general comment should include some discussion of the various types of electoral system so as to ensure that the spirit of article 25 was honoured. One particular aspect which had not yet been discussed was the way in which strong political factions in certain countries were able to exclude opponents from the election process by means of disqualification measures.

63. Mr. PRADO VALLEJO said that the draft was a very useful document which had obviously been prepared with great thoroughness. He had a number of general observations to make. Firstly, the comments would benefit from a more detailed analysis of the "unreasonable restrictions" referred to in article 25 and of the type of "restrictions" mentioned in paragraph 4 of the draft general comment which might be regarded as legitimate.

64. Turning to paragraph 2, he said the statement that rights under article 1.1 "are not cognizable under the first Optional Protocol" was too sweeping and might cause controversy.

65. With regard to paragraph 3, consideration needed to be given to a more precise definition of the concept of citizenship, which was not necessarily synonymous with nationality and did not mean the same thing in all countries.

66. Mr. BAN suggested that in its discussions of the very interesting document submitted by the Working Group, the Committee needed to be clear in its own mind as to whether article 25 provided substantive rights or only procedural safeguards. In the former case the purpose of article 25 would be seen as ensuring that the exercise of State power was based on the sovereignty of the people by making the Government answerable to the people, who supervised its activities and could ultimately remove it from office. In the latter case, the article would be interpreted as ensuring that procedural rules in elections were in conformity with the Covenant. That had hitherto been the approach adopted by the Committee, and perhaps too little attention had been paid to the question whether the bodies elected had real power. His own view was that article 25 had to be interpreted as providing substantive democratic rights, and that the Committee should accordingly give due consideration to amendments to the draft.

67. Mr. NDIAYE thanked the Working Group for its excellent draft and said that he also had a number of general observations to make.

68. Paragraph 3 needed to reflect the fact that naturalization did not in all countries immediately confer all the rights of citizenship but was often subject to a probationary period.

69. In paragraph 9, reference was made to diverse factors which prevented people from exercising their rights. It might be more appropriate to deal separately with some of those factors and, for example, devote a separate paragraph to "social or economic inequality". It might also be desirable to describe some of the methods used in a number of developing countries to overcome the problem of illiteracy among voters, which had often been used as a pretext for denying people their democratic rights.

70. Mr. WENNERGREN said that, in his view, the rights provided for under subparagraph (c) were of a different order to those in subparagraphs (a) and (b) and needed to be considered separately in the draft general comment.

71. Mr. EL SHAFEI thanked the Working Group for its excellent draft and said he had two remarks to make. Firstly, in his view, the general comment needed to elaborate on the problem, evident in many countries, of ensuring a smooth transfer of power and preventing particular factions from acquiring a monopoly of power. Secondly, greater emphasis needed to be placed, for example in paragraph 5, on the right and duty of elected bodies to monitor the exercise of power by the executive and the public administration.

72. The CHAIRMAN, speaking as a member of the Committee, agreed with Mr. Ban that the key issue in the discussion of the draft was whether article 25 was to be interpreted as providing substantive rights or only procedural safeguards. It was true that apparently fair and democratic procedures could be accompanied by unscrupulous manipulation of the electorate by the factions in power and could, in extreme cases, produce tyrannies as had happened with the Weimar Republic. Clearly, it was not enough to focus narrowly on procedural matters to make a democratic system work. Nevertheless, there was a limit to the Committee's ability to consider substantive issues in the present context and it might be safer, at least for the time being, to concentrate on formal and legal matters, which would of necessity include such areas as freedom of expression and association, as well as purely procedural aspects.

73. He noted that previous speakers had referred to the special character of article 25 which, alone of all the articles of the Covenant, referred to the rights of citizens. It would be highly desirable, as Mr. Prado Vallejo had already pointed out, to attempt a clear definition of the concept of citizenship, bearing in mind the right to vote in local elections enjoyed by non-citizens in certain European countries.

74. In considering the draft general comment, the Committee might find a useful source of material on specific electoral systems in the section of State party reports dealing with the implementation of article 20.

75. Mr. PRADO VALLEJO queried the principle stated in paragraph 8 that party affiliation should not be a condition of standing for office. In some Latin American countries, such a requirement had been introduced, not to restrict democracy, but to counteract the tendency of powerful and wealthy individuals to manipulate public opinion and secure election without any thought of rendering public service.

76. Mr. NDIAYE said that the experience of his country had been quite different. At one time, it had been impossible for anyone who was not a party apparatchik to be elected to public office. Reforms undertaken to rectify that situation had allowed people such as university teachers to stand for public office and had raised the level of political debate.

77. With regard to the reference in paragraph 9 to "social or economic inequality", he suggested that a more appropriate term would be "poverty", since inequality did not in itself present an obstacle to participation in elections, as the experience of black Americans had shown.

78. Mr. FRANCIS suggested that the Working Group should consider including a specific reference in the general comment to article 22, since there appeared to be an organic link between the subject matter of that article and of article 25.

79. Mrs. EVATT thanked the members of the Committee for their observations and said she would endeavour to incorporate them in a revised draft for consideration by the Committee at its next session.

The meeting rose at 6.05 p.m.